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of the creditor, it seems hardly advisable to put the sharp limitation which is advocated on the control of the legislature over the municipal corporation which it has created.

THE METAPHYSICAL NATURE OF A CORPORATION IN THE EYE OF THE LAW. — From the point of view of the man in the street a corporation is obviously a fiction. But this does not settle whether it is a fiction or a reality in the eye of the law. In a recent English article Mr. E. Hilton Young has given an interesting discussion of the question, in which he contends that while in theory a corporation exists only in the contemplation of the law which creates it, in practice it has become a real legal being apart therefrom. *The Legal Personality of a Foreign Corporation*, 22 L. Quar. Rev. 178 (April, 1906). His argument is, in brief, that a foreign corporation in theory does not exist outside of the sovereignty which creates it. Yet the courts of other sovereignties permit it to sue as plaintiff, and obtain personal jurisdiction of it as defendant. A court cannot obtain personal jurisdiction of that which in the eye of the law does not exist. Consequently, whatever the theory may be, for practical purposes a foreign corporation is a real legal being.

While the American authorities are in confusion, the general result seems to be a similar conflict between theory and practice. Indeed the seeds of it are found in Chief Justice Marshall's definition of a corporation as "an artificial being . . . existing only in contemplation of law." See *Dartmouth College v. Woodward*, 4 Wheat. (U. S.) 518, 636. This definition has been approved by the weight of American authority. But metaphysically it seems to involve a contradiction. A being *ex hypothesi* exists. A "being" which at the same time exists and does not exist is certainly a peculiar metaphysical concept. Yet this is precisely the result reached by the cases. In theory a corporation in the jurisdiction which creates it is essentially a legal entity, apart from the individual stockholders composing it. The word "person" in a statute has been held sufficiently to describe it. See *People v. Utica Ins. Co.*, 15 Johns. (N. Y.) 358. For purposes of federal jurisdiction it has been held to be a "citizen" of the state which creates it. See *Nashua & Lowell R. R. Corp. v. Boston & Lowell R. R. Corp.*, 136 U. S. 356. And yet courts of equity may rarely, where justice requires it, look behind the legal entity to the individual stockholders. See *Moore & Handley Hardware Co. v. Tower Hardware Co.*, 87 Ala. 206. A corporation, then, is generally regarded as existing in the state which creates it.

But it is equally well settled that since a corporation exists only in contemplation of the law it has no legal existence outside the state where that law operates. See *Augusta Bank v. Earle*, 13 Pet. (U. S.) 519, 588. Nevertheless, under the proper circumstances it may contract in another state by means of agents, and the courts thereof may by comity treat it as existent and permit it to sue on the contract. See *Augusta Bank v. Earle*, *supra*. But a foreign corporation may equally commit a tort or a nuisance. See *Austin v. N. Y. & E. R. R.*, 25 N. J. Law 381; *Seattle Gas & Electric Co. v. Citizens L. & P. Co.*, 123 Fed. Rep. 588. Comity, however, cannot give jurisdiction of a non-existent corporation when those aggrieved desire to serve it. Consequently, in the absence of statute, it is impossible to bring action *in personam* against a foreign corporation. See *Middlebrooks v. Springfield Ins. Co.*, 14 Conn. 301. In the absence of statute, therefore, it can act, but cannot be brought to account. But a corporation, though a "citizen" of its own state for purposes of jurisdiction, is not a "citizen" within the meaning of article 4, § 2 of the United States Constitution, which declares that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." See *Ducat v. City of Chicago*, 48 Ill. 172. Consequently a state may lay down the conditions under which a foreign corporation may do business therein. See *Paul v. Virginia*, 8 Wall. (U. S.) 168. Most of our states have therefore passed statutes compelling foreign corporations which do business within the state to

submit to the jurisdiction of the courts. See 6 THOMP., CORP., § 7971. The total result apparently is that a corporation exists within its own state in theory, but not always in practice; while in a foreign state it does not exist in theory, although in practice it is often treated as if it did. Metaphysically, therefore, it seems very like a non-existent being.

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